

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 20015662
)
J. DANGERMOND AND)
L. DANGERMOND)
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OPINION

Representing the Parties:

For Appellants: Shannon M. Carlson, CPA

For Respondent: Joel M. Smith, Tax Counsel III

A. ROSAS, Administrative Law Judge: Under Revenue and Taxation Code (R&TC) section 19324, appellants J. Dangermond and L. Dangermond appeal respondent Franchise Tax Board's action in denying appellants' claims for refund for tax years 2010, 2011 and 2012 in the amounts of \$76,112, \$68,010 and \$99,594, respectively. Appellants waived their right to an oral hearing; therefore, we decide this matter based on the written record.

ISSUE

Whether appellants' claims for refund for tax years 2010, 2011 and 2012 are timely.

FACTUAL FINDINGS

1. Appellants filed timely California tax returns on October 15, 2011; October 9, 2012; and October 15, 2013; for tax years 2010, 2011, and 2012, respectively.
2. On April 15, 2011, appellants submitted to respondent a timely payment for tax year 2010. On April 15, 2012, and April 15, 2013, respondent applied the most recent payments for appellants' tax years 2011 and 2012, respectively.
3. On October 15, 2016, appellants filed a first amended California tax return for tax year 2012, which respondent accepted as a timely claim for refund.¹ Respondent refunded to appellants the amount of this claim.

¹ This first claim for refund for tax year 2012 is not at issue.

4. On August 15, 2018, appellants filed three amended California tax returns: (1) a first amended return for tax year 2010; (2) a first amended return for tax year 2011; and (3) a second amended return for tax year 2012. All three amended returns claimed refunds.
5. Respondent denied appellants' claims for refund; appellants then filed this timely appeal.

DISCUSSION

The statute of limitations to file a claim for refund is set forth in R&TC section 19306. The statute of limitations provides, in pertinent part, that no credit or refund may be allowed unless a claim for refund is filed within the later of: (1) four years from the date the return was filed, if the return was timely filed pursuant to an extension of time to file; (2) four years from the due date for filing a return for the year at issue (determined without regard to any extension of time to file); or (3) one year from the date of overpayment. (*Appeal of Benemi Partners, L.P.*, 2020-OTA-144P (*Benemi*), citing R&TC, § 19306(a).) The taxpayer has the burden of proof in showing entitlement to a refund and that the claim is timely. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

There is no reasonable cause or equitable basis for suspending the statute of limitations. (*U.S. v. Brockamp* (1997) 519 U.S. 347 [no intent to apply equitable tolling in a federal tax statute of limitations].) The language of the statute of limitations is explicit and must be strictly construed. (*Benemi, supra*, citing *Appeal of Avril* (78-SBE-072) 1978 WL 3545.) A taxpayer's untimely filing of a claim for any reason bars a refund even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Benemi, supra*, citing *Appeal of Matthiessen* (85-SBE-077) 1985 WL 15856.) This is true even when it is later shown that the tax was not owed in the first place. (*U.S. v. Dalm* (1990) 494 U.S. 596, 602.)

Appellants filed their first amended tax return for tax year 2012 on October 15, 2016, and respondent accepted this first refund claim as timely. Appellants then filed their second amended tax return for tax year 2012 (i.e., their second refund claim for 2012) less than two years later, on August 15, 2018. As to these two refund claims for 2012, appellants argue that their second refund claim was timely because it was filed within four years from October 15, 2016. However, we are not aware of any authority that the filing of a timely original refund claim extends the general statute of limitations period in which to file a subsequent refund claim for the same tax year. Indeed, to allow taxpayers to unilaterally extend the four-year statute of limitations each time they file an amended return would violate the public policy in

favor of fixed deadlines. Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Prussner v. U.S.* (7th Cir. 1990) 896 F.2d 218, 222-223.) “There is no general judicial power to relieve [taxpayers] from deadlines fixed by legislatures” (*Id.* at p. 223.)

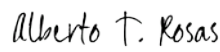
Based on when appellants filed their tax returns, the four-year statute of limitations to file a claim for refund expired on October 15, 2015, for tax year 2010; October 9, 2016, for tax year 2011; and October 15, 2017, for tax year 2012. Moreover, based on the most recent payments submitted or applied, the one-year statute of limitations to claim a refund expired on April 15, 2012, for tax year 2010; April 15, 2013, for tax year 2011; and April 15, 2014, for tax year 2012. However, appellants filed their amended California tax returns on August 15, 2018. Accordingly, appellants’ claims for refund are barred by the statute of limitations.

HOLDING


Appellants’ claims for refund for tax years 2010 through 2012 are untimely because the statute of limitations expired prior to the dates when appellants filed their claims.

DISPOSITION

We sustain respondent’s denial of appellants’ claims for refund for tax years 2010 through 2012.

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Alberto T. Rosas
Administrative Law Judge

We concur:

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Sheriene Anne Ridenour
Administrative Law Judge

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John O. Johnson
Administrative Law Judge

Date Issued: 9/17/2020